



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2021-0443; FRL-8778-01-R1]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: New Hampshire; 111(d)/129 Revised State Plan for Existing Large and Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act (CAA) state plan revision for existing large and small municipal waste combustors (MWCs) submitted by the New Hampshire Department of Environmental Services (NHDES) on October 1, 2018. The revised state plan incorporates wood residue combustion fuel quality standards and test methods at MWC facilities that process and combust construction and demolition debris.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2021-0443 at <https://www.regulations.gov>, or via email to kilpatrick.jessica@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will

generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05-2, Boston, MA, 02109-0287. Telephone: 617-918-1652. Fax: 617-918-0652 Email: kilpatrick.jessica@epa.gov.

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I. What is a state plan?

Section 111(d) of the CAA requires pollutants controlled under new source performance standards (NSPS) also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes emission guidelines (EGs) applicable to the control of the same pollutant for existing (designated) facilities. States with designated facilities must develop state plans to adopt the EGs into their body of regulations. States must also include in their state plans other elements, such as legal authority, inventories, and public participation documentation to demonstrate their ability to enforce the state plans.

II. Why does EPA need to approve state plans?

Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR part 60, subpart B.

III. Why does EPA regulate air emissions from MWCs?

EPA is required to regulate air emissions from MWCs under sections 111(d) and 129 of the Clean Air Act. Large municipal waste combustors (LMWCs) are capable of combusting more than 250 tons per day of solid waste, while small municipal waste combustors (SMWCs) are capable of combusting at least 35 tons per day, but no more than 250 tons per day of municipal solid waste or refuse-derived fuel. When burned, municipal solid wastes emit various air pollutants, including particulate matter, hydrogen chloride, dioxins/furans, heavy metals (lead, cadmium, and mercury), sulfur dioxide, and nitrogen oxides. Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease as well as increase risk of premature death. Chronic exposure to hydrogen chloride has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in

humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful physiological impacts on wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through ingestion of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

IV. What history does NHDES have with MWC state plans?

EPA approved NHDES's sections 111(d)/129 state plan for existing large and small MWCs on February 10, 2003, effective on April 11, 2003. The state plan establishes the operating and performance standards for MWCs with the capacity to combust greater than 35 tons per day of municipal solid waste, to comply with CAA sections 111(d) and 129 as well as State rules promulgated under the New Hampshire Code of Administrative Rules Env-A 3300 *Municipal Waste Combustion*. Since its approval, the state plan has been amended twice. On January 29, 2009, NHDES submitted a revision to comply with EPA's revised regulations for LMWCs via 40 CFR part 60, subpart Cb, Emissions Guidelines and Compliances for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994. EPA approved these revisions on September 3, 2014. *See* 79 FR 52204. The second revision was submitted by NHDES on July 28, 2016, to align standards for SMWCs with those of LMWCs. EPA proposed these revisions on June 6, 2017. *See* 82 FR 25972.

V. Why did NHDES revise the MWC state plan?

EPA's February 8, 2016 revision to 40 CFR part 241, subpart B, Identification of Non-Hazardous Secondary Materials that are Solid Wastes when Used as Fuels or Ingredients in Combustion Units, added construction and demolition (C&D) wood processed from C&D debris according to best management practices to its categorical list of non-waste fuels. (*See* 81 FR 6743). Subsequently on August 11, 2018, NHDES removed a ban on wood residue combustion via the state statute RSA 125-C:10-c(II)(b) *Combustion Ban*. The change allows combustion of no more than 10,000 tons per year of wood residue at any large municipal waste combustor from November 15 through April 15 from facilities that process construction and demolition debris in a manner no less stringent than the requirements at 40 CFR 241.4(a)(5), Non-Waste Determinations for Specific Non-Hazardous Secondary Materials When Used as a Fuel. The change also requires NHDES to adopt rules regarding fuel quality standards and test methods in accordance with RSA 125-C:6, XIV-a before any such combustion shall occur, therefore this state plan revision is a necessity. The change was initiated in 2016, and it was introduced by the NHDES Air Resources Division and the Solid Waste Division at multiple stakeholder meetings open to the public with opportunities for comment. The proposed rule was presented to the NHDES Air Resources Council on September 11, 2017, and the final rule was posted for notice on May 14, 2018, with a public hearing on June 15, 2018, a comment period ending on June 29, 2018, and an effective date of September 27, 2018.

VI. What revisions have been made to the state plan?

On October 1, 2018, NHDES submitted the sections 111(d)/129 revised state plan for existing large and small municipal waste combustors to EPA. The revision incorporates fuel quality standards and test methods for wood residue at MWC facilities that process C&D wood debris. The revised state plan includes changes to Env-A 3300, defining processed wood residue (PWR) as construction and demolition wood that has undergone positive or negative sorting in accordance with the best management practices as described in 40 CFR 241.4(a)(5). The state

plan revision also includes new part Env-A 3308 *Additional Requirements for Combusting PWR* with sections outlining applicability, operating practices, PWR fuel quality, fuel supplier requirements, independent third-party inspections, analysis of composite samples, reporting and recordkeeping for LMWCs combusting PWR, and cessation and resumption of receipt of PWR from a supplier.

VII. Why is EPA proposing to approve NHDES's revised state plan?

EPA has evaluated NHDES's sections 111(d)/129 revised state plan for existing large and small MWCs for consistency with the CAA, EPA guidelines, and policy. C&D wood is a non-hazardous secondary material that is not classified as a solid waste when used as a fuel in a combustion unit and is regulated by Env-A 3300, which EPA finds to be no less stringent than 40 CFR 241.4(a)(5).

Furthermore, the quantity of PWR New Hampshire's existing large MWCs are allowed to combust ensures that the units do not meet the definition of a cofired combustor and thus become exempt from Federal regulations for large MWCs. Cofired combustors, defined as MWC units combusting municipal solid waste with nonmunicipal solid waste fuel, that have a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight, are exempt from large MWC emission guidelines and Federal Plan. *See* 40 CFR 60.32b(i), 60.50a(d), 60.50b(j), 60.1020(g), 60.1555(g), 62.14102(j), and 62.15020(g). By limiting the combustion of no more than 10,000 tons per year of PWR at any MWC from November 15 through April 15, and further restricting combustion of the material from November 15 through April 15, it is impossible for a large MWC (with a daily capacity rating of no less than 250 tons per day) to meet the definition of a cofired combustor. Therefore, EPA has concluded that the state plan revision meets all requirements, including compliance with Federal regulations.

EPA is proposing to approve NHDES's state plan revision based on our analysis above and our findings that NHDES provided adequate public notice of public hearings for the proposed

rulemaking that allows NHDES to carry out and enforce provisions that are at least as protective as the Federal emission guidelines for large and small MWCs. Furthermore, NHDES demonstrates legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

VIII. Proposed action.

EPA is proposing to approve NHDES's sections 111(d)/129 revised State plan for existing large and small MWCs. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

IX. Incorporation by reference.

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the State of New Hampshire Amendments to the sections 111(d)/129 State Plan for Municipal Waste Combustion, dated October 1, 2018. NHDES amends New Hampshire's Code of Administrative Rules Env-A 3300, Municipal Waste Combustion, effective September 27, 2018, regarding MWC units as discussed in Section VI of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

X. Statutory and Executive order reviews.

Under section 129 of the Clean Air Act, the Administrator is required to approve a state plan submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7429(b); 40 CFR 60.27. Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the revised state plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Industrial facilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: July 20, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

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